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Human rights questions: implementation of human rights instruments

Report of the Third Committee*

Rapporteur: Mr. Pedro **Cardoso** (Brazil)

I. Introduction

1. At its 17th plenary meeting, on 20 September 2005, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixtieth session, under the item entitled "Human rights questions", the sub-item entitled "Implementation of human rights instruments" and to allocate it to the Third Committee.

2. The Committee held a general discussion on the sub-item jointly with sub-item 71 (d) at its 22nd, 24th, 28th and 29th meetings, on 24, 26 and 28 October 2005, and took action on sub-item (a) at its 29th, 39th, 42nd, 43rd and 48th meetings, on 28 October and 10, 17, 18 and 23 November. An account of the Committee's consideration is contained in the relevant summary records (A/C.3/60/SR.22, 24, 28, 29, 39, 42, 43 and 48).

3. For the documents before the Committee under this sub-item, see A/60/509.

4. At the 22nd meeting, on 24 October, the Director of the New York Office of the United Nations High Commissioner for Human Rights addressed the Committee (see A/C.3/60/SR.22).

5. At the 24th meeting, on 26 October, the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment made an introductory statement and engaged in a question-and-answer session with the representatives of Yemen, China, Nepal, the United Kingdom of Great Britain and Northern Ireland (on behalf of the States Members of the United Nations that are members of the European Union), Cuba, Brazil, Venezuela

* The report of the Committee on this item will be issued in seven parts, under the symbol A/60/509 and Add.1, Add.2 (Parts I and II) and Add.3-5.

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(Bolivarian Republic of), Georgia, Iraq, Norway, the United States of America, Bolivia, Pakistan, the Libyan Arab Jamahiriya, Mexico and Mongolia (see A/C.3/60/SR.24).

6. At the 28th meeting, on 28 October, the Representative of the Secretary-General on the human rights of internally displaced persons made an introductory statement (see A/C.3/60/SR.28).

7. At the 29th meeting, on 28 October, the Representative of the Secretary-General on the human rights of internally displaced persons engaged in a question-and-answer session with the representatives of Serbia and Montenegro, Nigeria, the United Kingdom of Great Britain and Northern Ireland (on behalf of the States Members of the United Nations that are members of the European Union), the Sudan and Switzerland (see A/C.3/60/SR.29).

II. Consideration of proposals

A. Draft resolution A/C.3/60/L.24

8. At the 29th meeting, on 28 October, the representative of Chile, on behalf of Argentina, Austria, Azerbaijan, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, the Congo, Costa Rica, Cyprus, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Greece, Guatemala, Honduras, Hungary, Ireland, Italy, Latvia, Mexico, the Netherlands, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, the Republic of Moldova, Romania, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, the United Kingdom of Great Britain and Northern Ireland and Uruguay, introduced a draft resolution entitled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (A/C.3/60/L.24). Subsequently, Albania, Armenia, Croatia, the Dominican Republic, Haiti, Iceland, Japan, Kenya, Liechtenstein, Luxembourg, Monaco, Sierra Leone, the former Yugoslav Republic of Macedonia and Venezuela (Bolivarian Republic of), joined in sponsoring the draft resolution.

9. At the 39th meeting, on 10 November, the Committee was advised that the draft resolution had no programme budget implications.

10. At the same meeting, statements were made by the representatives of Chile, India, Switzerland, France, Uruguay (on behalf of the States Members of the United Nations that are members of the Common Market of the South (MERCOSUR)), Canada, the United States of America, South Africa and New Zealand (see A/C.3/60/SR.39).

11. Also at the same meeting, the Committee adopted draft resolution A/C.3/60/L.24 without a vote (see para. 23, draft resolution I).

12. After the adoption of the draft resolution, statements were made by the representatives of Germany, the United Kingdom of Great Britain and Northern Ireland (on behalf of the States Members of the United Nations that are members of the European Union) and Chile (see A/C.3/60/SR.39).

B. Draft resolution A/C.3/60/L.25 and Rev.1

13. At the 29th meeting, on 28 October, the representative of Denmark, on behalf of Andorra, Argentina, Austria, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Greece, Guatemala, Honduras, Italy, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Namibia, the Netherlands, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, the Republic of Moldova, Romania, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, the former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Ukraine and Uruguay, introduced a draft resolution entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (A/C.3/60/L.25), which read:

"*The General Assembly*,

"*Reaffirming* that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

"*Recalling* that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments and customary international law,

"*Recalling also* that a number of international, regional and domestic courts, including the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, have recognized that the prohibition of torture is a peremptory norm of international law,

"*Recalling further* the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

"*Noting* that under the Geneva Conventions of 1949 torture is a grave breach and that under the statutes of the International Criminal Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, and the Rome Statute of the International Criminal Court acts of torture are war crimes and can constitute crimes against humanity,

"*Commending* the persistent efforts by non-governmental organizations, including the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

"1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can

thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, inter alia, by ensuring that no individual in their custody or under their physical control, regardless of nationality or physical location, shall be subject to torture or cruel, inhuman or degrading treatment or punishment;

"2. *Emphasizes* that Governments must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based manifestations, inter alia, by ensuring proper follow-up of recommendations and conclusions from the relevant treaty bodies and mechanisms, including the Committee against Torture and the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment;

"3. *Condemns in particular* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

"4. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;

"5. *Stresses also* that all acts of torture must be made offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international humanitarian law and that the perpetrators of all acts of torture must be prosecuted and punished;

"6. *Urges* States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

"7. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

"8. *Recalls* that States shall not expel, return ('refouler'), extradite or in any other way transfer a person to another State under any circumstances, including if diplomatic assurances have been obtained, where there are substantial grounds for believing that the person would be in danger of being subjected to torture;

"9. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain

redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges Governments to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

"10. *Stresses* that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment and punishment;

"11. *Reminds* all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person;

"12. *Calls upon* all Governments to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment;

"13. *Urges* all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority;

"14. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual applications, to consider the possibility of withdrawing their reservations to article 20 and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

"15. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee against Torture;

"16. *Calls upon* States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides further measures for use in the fight against and prevention of torture and other cruel, inhuman or degrading treatment or punishment;

"17. *Welcomes* the work of the Committee against Torture and the report of the Committee, submitted in accordance with article 24 of the Convention;

"18. *Calls upon* the United Nations High Commissioner for Human Rights to continue to provide, at the request of Governments, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive

mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

"19. *Welcomes* the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

"20. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by Governments to his recommendations, visits and communications, including progress made and problems encountered;

"21. *Calls upon* all Governments to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to respond fully and expeditiously to his urgent appeals, to grant requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations;

"22. *Stresses* the need for the continued regular exchange of views among the Committee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

"23. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture, and appeals to all Governments and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions;

"24. *Requests* the Secretary-General to continue to transmit to all Governments the appeals of the General Assembly for contributions to the Fund and to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

"25. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture, noting the future establishment of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention, commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture;

"26. *Further requests* the Secretary-General to submit to the Commission on Human Rights at its sixty-second session and to the General

Assembly at its sixty-first session a report on the status of the Convention and a report on the operations of the Fund;

"27. *Calls upon* all Governments, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

"28. *Decides* to consider at its sixty-first session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment."

14. At the 43rd meeting, on 18 November, the Committee had before it a revised draft resolution (A/C.3/60/L.25/Rev.1), submitted by the sponsors of draft resolution A/C.3/60/L.25 and Albania, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bolivia, Burkina Faso, Canada, the Central African Republic, Eritrea, Germany, Ghana, Grenada, Hungary, Iceland, Ireland, Jordan, Kenya, Liechtenstein, Micronesia (Federated States of), Monaco, Mongolia, New Zealand, Papua New Guinea, the Republic of Korea, San Marino, South Africa, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

15. At the same meeting, the Secretary of the Committee read out a statement of programme budget implications of the draft resolution.

16. Also at the 43rd meeting, the representative of Denmark orally revised the draft resolution as follows:

(a) In operative paragraph 2, the words "States ensuring proper follow-up of" were replaced with the words "taking fully into account the" and the words ", after its consideration of their reports," after the words "Committee Against Torture" were deleted;

(b) In operative paragraph 21, the words "to respond favourably to" were replaced by the words "to give serious consideration to responding favourably to".

17. At the same meeting, the Committee adopted draft resolution A/C.3/60/L.25/Rev.1, as orally revised, without a vote (see para. 23, draft resolution II).

18. After the adoption of the draft resolution, the representative of the Bolivarian Republic of Venezuela made a statement (see A/C.3/60/SR.43).

C. Draft resolution A/C.3/60/L.26

19. At the 39th meeting, on 10 November, the representative of Sweden, on behalf of Albania, Argentina, Austria, Belgium, Bolivia, Canada, Chile, Costa Rica, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Mexico, Monaco, the Netherlands, Nigeria, Norway, Panama, Peru, Poland, Portugal, the Republic of Moldova, Romania, Slovenia, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland

introduced a draft resolution entitled "International Covenants on Human Rights" (A/C.3/60/L.26). Subsequently, Australia, Azerbaijan, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Croatia, El Salvador, Georgia, Guatemala, Honduras, Jordan, Latvia, Liechtenstein, Luxembourg, Malta, New Zealand, Nicaragua, the Republic of Moldova, Serbia and Montenegro, Slovakia, Spain, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and Uruguay joined in sponsoring the draft resolution.

20. At the 42nd meeting, on 17 November, the Secretary of the Committee read out a statement regarding financial provisions relating to the revised draft resolution.

21. At the same meeting, the representative of Sweden orally revised the draft resolution as follows:

(a) Operative paragraph 2, which had read:

"*Takes note with appreciation of* the new States parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and to the Optional Protocols to the International Covenant on Civil and Political Rights, and strongly appeals to all States that have not yet done so to become parties to the Covenants, and to consider as a matter of priority acceding to the Optional Protocols and making the declaration provided for in article 41 of the International Covenant on Civil and Political Rights, and requests the Secretary-General to continue to support the annual treaty event to this end"

was replaced by:

"*Strongly appeals* to all States that have not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as to consider as a matter of priority acceding to the Optional Protocols to the International Covenant on Civil and Political Rights and to making the declaration provided for in article 41 of the International Covenant on Civil and Political Rights, and, while acknowledging that additional States have recently become parties to these instruments, request the Secretary-General to continue to support the annual treaty event to this end";

(b) In operative paragraph 23, the word "*Welcomes*" was replaced with the words "*Takes note with appreciation* of ";

(c) At the end of operative paragraph 26, the words "and welcomes in this regard the decision at the 2005 World Summit to double the regular budget resources of the Office over the next five years" were deleted.

22. Also at the same meeting, the Committee adopted draft resolution A/C.3/60/L.26, as orally revised, without a vote (see para. 23, draft resolution III).

III. Recommendations of the Third Committee

23. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights,[1] the International Covenants on Human Rights,[2] other relevant human rights instruments and the Vienna Declaration and Programme of Action,[3]

Affirming the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

Recalling the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005[4] and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. *Adopts* the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;

2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of Government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;

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[1] Resolution 217 A (III).

[2] Resolution 2200 A (XXI), annex.

[3] A/CONF.157/24 (Part I), chap. III.

[4] To be issued as *Official Records of the Economic and Social Council, 2005, Supplement No. 3* (E/2005/23), chap. I, sect. A.

3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.[5]

Annex

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Preamble

The General Assembly,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular the Universal Declaration of Human Rights[6] at article 8, the International Covenant on Civil and Political Rights[7] at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination[8] at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[9] at article 14, the Convention on the Rights of the Child[10] at article 39, and of international humanitarian law as found in article 3 of the Hague Convention of 18 October 1907 concerning the Laws and Customs of War on Land (Convention IV),[11] article 91 of Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,[11] and articles 68 and 75 of the Rome Statute of the International Criminal Court,[12]

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples' Rights at article 7, the American Convention on Human Rights at article 25, and the Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

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[5] United Nations publication, Sales No. 04.XIV.2.

[6] See General Assembly resolution 2200 A (XXI), annex.

[7] General Assembly resolution 2106 A (XX), annex.

[8] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[9] Ibid., vol. 1577, No. 27531.

[10] See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, *Oxford University Press*, 1915).

[11] United Nations, *Treaty Series*, vol. 1125, No. 17512.

[12] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 15 June–17 July 1998*, vol. II, *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Noting that the Rome Statute of the International Criminal Court[1] requires the establishment of "principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

Affirming that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

Emphasizing that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

Recalling that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

Noting that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

Adopts the following Basic Principles:

I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

(a) Treaties to which a State is a party;

(b) Customary international law;

(c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

(a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;

(b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

(c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;

(d) Ensuring that their domestic law provides at least the same level of protection for victims as required by their international obligations.

II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation, and

(d) Provide effective remedies to victims, including reparation, as described below.

III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

IV. Statutes of limitations

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

V. Victims of gross violations of international human rights law and serious violations of international humanitarian law

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. Victims' right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

(a) Equal and effective access to justice;

(b) Adequate, effective and prompt reparation for harm suffered;

(c) Access to relevant information concerning violations and reparation mechanisms.

VIII. Access to justice

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should

include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the party liable for the harm suffered is unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

X. Access to relevant information concerning violations and reparation mechanisms

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

XI. Non-discrimination

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or ground, without exception.

XII. Non-derogation

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

XIII. Rights of others

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

Draft resolution II
Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,

Recalling also that a number of international, regional and domestic courts, including the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, have recognized that the prohibition of torture is a peremptory norm of international law and have held that the prohibition of cruel, inhuman or degrading treatment or punishment is customary international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[1]

Noting that under the Geneva Conventions of 1949[2] torture and inhuman treatment are a grave breach and that under the statutes of the International Criminal Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, and the Rome Statute of the International Criminal Court[3] acts of torture constitute war crimes and can constitute crimes against humanity,

Commending the persistent efforts by non-governmental organizations, including the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading

[1] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[2] Ibid., vol. 75, Nos. 970-973.

[3] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I, *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

treatment or punishment, including their gender-based manifestations, and also emphasizes the importance of taking fully into account the recommendations and conclusions from the relevant treaty bodies and mechanisms, including the Committee against Torture, and the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment;

3. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

4. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[4] as a useful tool in efforts to combat torture;

5. *Stresses also* that all acts of torture must be made offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international humanitarian law and in this regard constitute war crimes and can constitute crimes against humanity, and that the perpetrators of all acts of torture must be prosecuted and punished;

6. *Urges* States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

7. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

8. *Urges* States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

9. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

10. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or

[4] Resolution 55/89, annex.

imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms can be effective measures for the prevention of torture and other cruel, inhuman or degrading treatment and punishment;

11. *Reminds* all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;

12. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment;

13. *Urges* all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[5] as a matter of priority;

14. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20 and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

15. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee against Torture;

16. *Calls upon* States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[6] which provides further measures for use in the fight against and prevention of torture and other cruel, inhuman or degrading treatment or punishment;

17. *Welcomes* the work of the Committee against Torture and the report of the Committee,[7] submitted in accordance with article 24 of the Convention;

18. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive

[5] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[6] Resolution 57/199, annex.

[7] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44* (A/60/44).

mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

19. *Notes with appreciation* the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment,[8] and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

20. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

21. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow-up his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

22. *Stresses* the need for the continued regular exchange of views among the Committee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

23. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture, and appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions;

24. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Fund and to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

25. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture, noting the upcoming entry into force of the Optional Protocol to the Convention;

26. *Further requests* the Secretary-General to submit to the Commission on Human Rights at its sixty-second session and to the General Assembly at its sixty-first session a report on the status of the Convention and a report on the operations of the Fund;

[8] See A/60/316.

27. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

28. *Decides* to consider at its sixty-first session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment.

Draft resolution III
International Covenants on Human Rights

The General Assembly,

Recalling its resolution 58/165 of 22 December 2003 and Commission on Human Rights resolution 2004/69 of 21 April 2004,[1]

Mindful that the International Covenants on Human Rights[2] constitute the first all-embracing and legally binding international treaties in the field of human rights and, together with the Universal Declaration of Human Rights,[3] form the core of the International Bill of Human Rights,

Taking note of the report of the Secretary-General[4] on the status of the International Covenant on Economic, Social and Cultural Rights,[2] the International Covenant on Civil and Political Rights[2] and the Optional Protocols to the International Covenant on Civil and Political Rights,[5]

Recalling the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the other rights,

Recognizing the important role of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in examining the progress made by States parties in fulfilling the obligations undertaken in the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights and in providing recommendations to States parties on their implementation,

Considering that the effective functioning of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights is indispensable for the full and effective implementation of the International Covenants on Human Rights,

Recognizing the importance of regional human rights instruments and monitoring mechanisms in complementing the universal system of promotion and protection of human rights,

1. *Reaffirms* the importance of the International Covenants on Human Rights[2] as major components of international efforts to promote universal respect for and observance of human rights and fundamental freedoms;

2. Strongly appeals to all States that have not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights[2] and the International Covenant on Civil and Political Rights,[2] and to consider as a matter of priority acceding to the Optional Protocols to the International Covenant on Civil

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[1] See *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[2] Resolution 2200 A (XXI), annex.

[3] Resolution 217 A (III).

[4] A/60/284.

[5] See resolution 2200 A (XXI), annex, and resolution 44/128, annex.

and Political Rights[a] and making the declaration provided for in article 41 of the International Covenant on Civil and Political Rights, and, while acknowledging that additional States have recently become parties to these instruments, requests the Secretary-General to continue to support the annual treaty event to this end;

3. *Invites* the United Nations High Commissioner for Human Rights to intensify systematic efforts to encourage States to become parties to the International Covenants on Human Rights and, through the programme of advisory services in the field of human rights, to assist such States, at their request, in ratifying or acceding to the Covenants and to the Optional Protocols to the International Covenant on Civil and Political Rights with a view to achieving universal adherence;

4. *Calls for* the strictest compliance by States parties with their obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and, where applicable, the Optional Protocols to the International Covenant on Civil and Political Rights;

5. *Emphasizes* that States must ensure that any measure to combat terrorism complies with their obligations under relevant international law, including their obligations under the International Covenants on Human Rights, and welcomes the establishment by the Commission on Human Rights of the mandate of a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;[b]

6. *Stresses* the importance of avoiding the erosion of human rights by derogation and recalls that, in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights are recognized as non-derogable in any circumstances and that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, bearing in mind the need for States parties to provide the fullest possible information during states of emergency so that the justification for the appropriateness of measures taken in those circumstances can be assessed, and underlining the exceptional and temporary nature of any such derogations;[c]

7. *Encourages* States parties to consider limiting the extent of any reservations that they lodge to the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, to formulate any reservations as precisely and narrowly as possible, and to regularly review such reservations with a view to withdrawing them so as to ensure that no reservation is incompatible with the object and purpose of the relevant treaty;

8. *Welcomes* the annual reports of the Human Rights Committee submitted to the General Assembly at its fifty-ninth[d] and sixtieth[e] sessions, and takes note of

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[a] See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* (E/2005/23), chap. II, sect. A, resolution 2005/80 of 21 April 2005, para. 14 (a) through (f).

[b] See, for example, General Comment No. 29, adopted by the Human Rights Committee on article 4 of the Covenant regarding derogations from the provisions of the Covenant during a state of emergency (*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex VI).

[c] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40* (A/59/40).

[d] Ibid., *Sixtieth Session, Supplement No. 40* (A/60/40).

the General Comments adopted by the Committee,[10] including the most recent General Comment, No. 31, on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights;[11]

9. *Also welcomes* the reports of the Committee on Economic, Social and Cultural Rights on its thirtieth and thirty-first sessions[12] and on its thirty-second and thirty-third sessions,[13] and takes note of the General Comments adopted by the Committee,[10] including the most recent General Comment, No. 16, on the equal right of men and women to the enjoyment of all economic, social and cultural rights, adopted by the Committee at its thirty-fourth session;

10. *Expresses regret* at the number of States parties that have failed to fulfil their reporting obligations under the International Covenants on Human Rights, and urges States parties to fulfil their reporting obligations on time and to attend and participate in the consideration of the reports by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights when so requested;

11. *Urges* States parties to make use in their reports of sex-disaggregated data, and stresses the importance of integrating a gender perspective in the implementation of the International Covenants on Human Rights at the national level, including in the national reports of States parties and in the work of the Human Rights Committee and of the Committee on Economic, Social and Cultural Rights;

12. *Strongly encourages* States parties that have not yet submitted core documents to the Office of the United Nations High Commissioner for Human Rights to do so, and invites all States parties regularly to review and update their core documents while bearing in mind the current discussion on the elaboration of an expanded core document;

13. *Urges* States parties to take duly into account, in implementing the provisions of the International Covenants on Human Rights, the recommendations and observations made during the consideration of their reports by the Human Rights Committee and by the Committee on Economic, Social and Cultural Rights, and the views adopted by the Human Rights Committee under the first Optional Protocol to the International Covenant on Civil and Political Rights;

14. *Urges* all States to publish the texts of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights in as many local languages as possible and to distribute them and make them known as widely as possible to all individuals within their territory and subject to their jurisdiction;

15. *Urges* each State party to give particular attention to the dissemination at the national level of their reports submitted to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and, further, to translate, publish and make available as widely as possible to all individuals within its

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[10] See HRI/GEN/1/Rev.7.

[11] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40* (A/59/40), vol. I, annex III.

[12] *Official Records of the Economic and Social Council, 2004, Supplement No. 2* (E/2004/22).

[13] Ibid., *2005, Supplement No. 2* (E/2005/22).

territory and subject to its jurisdiction by appropriate means the full text of the recommendations and observations made by the Committees after the examination of those reports,

16. *Reiterates* that States parties should take into account, in their nomination of members to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, that the Committees shall be composed of persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience, and to equal representation of women and men, and that members serve in their personal capacity, and also reiterates that, in the elections of the Committees, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems;

17. *Invites* the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, when considering the reports of States parties, to continue to identify specific needs that might be addressed by United Nations departments, funds and programmes and the specialized agencies, including through the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights;

18. *Stresses* the need for improved coordination among relevant United Nations mechanisms and bodies in supporting States parties, upon their request, in implementing the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, and encourages continued efforts in this direction;

19. *Expresses its appreciation* for the efforts made so far by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to improve the efficiency of their working methods and encourages the Committees to pursue their efforts and, in this regard, welcomes the meetings held by the Committees and States parties to exchange ideas on how to render the working methods of the Committees more efficient, and encourages all States parties to continue to contribute to the dialogue with practical and concrete proposals and ideas on ways to improve the effective functioning of the Committees;

20. *Takes note* of the proposals of the Secretary-General and the United Nations High Commissioner for Human Rights as well as other proposals on human rights treaty body reform, inter alia, to harmonize reporting requirements and to create a unified standing treaty body, and looks forward to further deliberations on this subject;

21. *Welcomes* the continuing efforts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to strive for uniform standards in the implementation of the provisions of the International Covenants on Human Rights;

22. *Notes* the need for further consideration of the issue of justiciability of the rights set forth in the International Covenant on Economic, Social and Cultural Rights and for further efforts towards developing indicators and benchmarks to measure progress in the national implementation by States parties of the rights protected by the Covenant;

23. *Takes note with appreciation* of the report on its second session of the open-ended working group of the Commission on Human Rights established with the view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights,[14] and encourages all parties to participate actively at the third session of the working group, which will consider a paper with elements for an optional protocol presenting a more judgmental analysis of all the various options for an optional protocol, to be submitted by the Chairperson of the working group in order to facilitate a more focused discussion at the third session;

24. *Encourages* the specialized agencies that have not yet done so to submit their reports on the progress made in achieving the observance of the provisions of the International Covenant on Economic, Social and Cultural Rights, in accordance with article 18 of the Covenant, and expresses its appreciation to those that have done so;

25. *Encourages* the Secretary-General to continue to assist States parties to the International Covenants on Human Rights in the preparation of their reports, including by convening seminars or workshops at the national level for the training of government officials engaged in the preparation of such reports and by exploring other possibilities available under the programme of advisory services in the field of human rights;

26. *Requests* the Secretary-General to ensure that the Office of the United Nations High Commissioner for Human Rights effectively assists the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the implementation of their respective mandates by providing, inter alia, adequate Secretariat staff resources and conference and other relevant support services;

27. *Also requests* the Secretary-General to keep the General Assembly informed of the status of the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, including all reservations and declarations, through the United Nations websites.

[14] E/CN.4/2003/32.